



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 15-01652

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro Se*

04/28/2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 53-year-old employee of a defense contractor. He has a history of financial delinquencies, including filing for bankruptcy protection five times since 1999. In addition, it is alleged that he falsified his April 14, 2014 Electronic Questionnaire for Investigations Processing (e-QIP). Applicant has not mitigated the Financial Considerations security concerns because he has failed to show he acted responsibly with respect to his outstanding debts. He did not mitigate the Personal Conduct security concerns created by his intentional omission of his judgment debts from his e-QIP. Eligibility for access to classified information is denied.

Statement of the Case

On November 22, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after September 1, 2006. (Item 1.)

Applicant responded to the SOR (Answer) on December 5, 2015. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on March 31, 2016. A complete copy of the File of Relevant Material (FORM), containing 14 Items, was received by Applicant on April 6, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit anything in response to the FORM within the 30-day period that ended May 6, 2016. DOHA assigned the case to me on December 13, 2016.

Findings of Fact

Applicant admitted all of the SOR allegations in subparagraphs 1.a through 1. m. He failed to admit or deny SOR subparagraph 2.a, and as a result, it will be treated as a denial. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. On his e-QIP, he listed that he was working for two different employers. He identified that he has been with the first employer since 1994 and the second since 1985. He also identified self-employment from 2007 to 2009. (Item 3.)

In section 26 of Applicant's e-QIP, he answered "Yes" to the question: "In the last seven (7) years have you filed a petition under any chapter of the bankruptcy code?" He disclosed a March 2014 Chapter 13 bankruptcy filing. He attributed that filing to his girlfriend's unemployment. (Item 3.) He answered "No" to the rest of the financial questions, including "Delinquency Involving Enforcement . . . In the past seven (7) years, you had a judgment entered against you . . ." (Item 3.) He did not disclose the judgments entered against him in July 2013 and December 2011, as alleged in SOR subparagraphs 1.l and 1.m.¹

In October 1999, Applicant filed for Chapter 13 bankruptcy (SOR 1.g). That bankruptcy was discharged in October 2001. (Item 13.) In May 2007, he again filed for Chapter 13 bankruptcy (SOR 1.f). This bankruptcy was dismissed in May 2007. (Item 12.) In March 2014, he filed Chapter 13 bankruptcy for the third time (SOR 1.b and 1.e). That filing was dismissed in May 2014. (Item 11.) It was refiled in June 2014 as a Chapter 7 bankruptcy petition, but was dismissed in July 2014 (SOR 1. c). (Item 10.) In October of 2014, Applicant filed for Chapter 7 bankruptcy, which was discharged in February 2015 (SOR 1.d). (Item 9.) On that Chapter 7 bankruptcy filing, Applicant listed liabilities of \$64,101, and assets of \$258,190. The debts listed in subparagraphs 1.h through 1.m were discharged through his latest Chapter 7 bankruptcy. However, the

¹ The SOR alleged that Applicant failed to disclose the judgment entered against him in March 2015 (SOR.1.a), however at the time he completed the e-QIP in April 2014, this judgment had not yet been filed.

\$1,164 judgment, alleged in SOR subparagraph 1.a, was incurred after his latest bankruptcy discharge and it remains unresolved.

Applicant provided no recent household budget showing monthly household expenses. He did not provide a copy of his current earnings statement. His 2015 Chapter 7 bankruptcy reflected that his net monthly income at that time was \$1,756 and his monthly expenses were \$2,913, leaving him with a negative cash flow each month. (Item 9.) Without updated information, I am unable to assess his current financial status, and his ability or willingness to repay his remaining delinquent debt and avoid future delinquencies. The record lacks any evidence of credit or financial counseling, other than that which is required by the bankruptcy court.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a), describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of

the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concern under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Since 1999, Applicant has filed for bankruptcy protection five times and has demonstrated a long history of inability or unwillingness to satisfy his debts. In addition, since his latest discharge of debt in February 2015, he has incurred a judgment for \$1,147 that remains unresolved. His bankruptcy records show he consistently spends beyond his means. The Government established the disqualifying conditions in AG ¶ 19(a), 19(c), and 19(e). Further inquiry about the applicability of mitigating conditions is required.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has not acted responsibly, or in a timely manner, to attempt to resolve his delinquent debt. His debt is current and on-going as demonstrated by the unresolved judgment identified in SOR subparagraph 1.a. Applicant's conduct does not warrant application of AG ¶ 20(a).

Applicant's debts that were identified in his Chapter 7 bankruptcy petition, filed in October 2014, may have been due, in part, to his girlfriend's unemployment, but he has had ample time to resolve his debt since then. Further, he failed to demonstrate responsible behavior toward his debts, despite receiving a fresh start after his previous discharged bankruptcy. AG ¶ 20(b) is only partially mitigating.

Applicant completed a financial management class in order to file his bankruptcy petition. What effect, if any, the class had on Applicant's finances is unclear, as he has not demonstrated a track record of financial responsibility. His financial problems are not fully resolved or under control, despite the discharge of his debts in 2015. SOR allegation 1.a remains unresolved. Further, records show that at least in late 2014, he was spending substantially more than he earned each month. Neither AG ¶¶ 20(c) nor 20(d) apply.

Applicant presented no evidence to substantiate a dispute with any of his creditors. AG ¶ 20(e) does not provide mitigation.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying under the facts of this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to list two recent judgments that had been entered against him on his 2014 e-QIP in Section 26. He clearly knew he had judgments that had not been resolved. Yet, he chose to deny the existence of the debts on the e-QIP. This behavior indicates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised in completing his e-QIP. Falsifying information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided information in this record to show that he has met his burden of proof to mitigate his personal conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has not acted in a trustworthy manner when it comes to addressing his financial delinquencies or in completing his e-QIP. There is insufficient evidence to demonstrate that recurrence of financial irresponsibility or deceptive conduct is unlikely. The potential for pressure, coercion, or duress remains undiminished.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.m: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge